

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for)	CC Docket No. 98-67
Individuals with Hearing and Speech Disabilities)	
)	RM - _____
Types of Video Relay Service Calls)	

**PETITION TO INITIATE A NOTICE AND COMMENT
RULEMAKING PROCEEDING**

January 27, 2010

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SUMMARY

Section 225 of the Communications Act of 1934 requires the Commission to ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner. Further, the Act and the Commission's rules show a very clear directive on the part of Congress and the Commission to make available to people with disabilities all of the same types of calls and services that are or become available to people without disabilities, when technologically feasible to do so, and in a manner that is as functionally equivalent as possible.

Notwithstanding these mandates, Consumer Groups have learned that some VRS providers are either not connecting or may stop connecting certain types of VRS calls because the National Exchange Carriers Association (NECA), the TRS Fund administrator, is withholding payment for certain types of calls. All of these types of calls are provided by telecommunications carriers, are technologically feasible, and are otherwise required to be connected and handled in accordance with the Commission's rules. These NECA payment withholdings, for certain types of calls, have languished, without resolution, for months. As a result, some VRS providers may be financially unable to continue providing service for those types of calls. Not connecting certain types of VRS calls is inconsistent with the Commission's rules, harms consumers, and is not functionally equivalent to the communication access that hearing telephone users enjoy. Reasonable exercise of the Commission's and NECA's authority to verify payment claims, to curb fraud, waste, and abuse, and to suspend or delay payments should not, directly or indirectly, impact negatively on the delivery of TRS to consumers; diminish functional equivalency; or limit, restrict, or disable consumers' access to the telephone network.

Consumer Groups urge the Commission to take action, as described herein, particularly by initiating rulemaking requested by Consumer Groups and other stakeholders, to identify and to address potential waste, fraud, and abuse by providing clarification about permissible marketing practices and the types of calls that are compensable by the TRS Fund. In addition, Consumer Groups urge the Commission to promote transparency and ensure stakeholder input, before the Commission takes any action which may limit, restrict, or disable consumer access to the telephone network, including actions that achieve the same result through the development and implementation of NECA policies and procedures.

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**PETITION TO INITIATE A NOTICE AND COMMENT
RULEMAKING PROCEEDING**

The National Association of the Deaf (“NAD”), Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), Association of Late-Deafened Adults, Inc. (“ALDA”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”), Hearing Loss Association of America (“HLAA”) and American Association of the Deaf-Blind (“AADB”) (collectively, the “Consumer Groups”), pursuant to Section 1.401 of the Federal Communications Commission (“FCC” or “Commission”) Rules,¹ hereby petitions the Commission to issue a notice and comment rulemaking proceeding on the matter of limiting or restricting certain types of Video Relay Service (VRS) calls.

I. Introduction

A. Interest of Petitioners

Many members of the Consumer Groups, including some of the representatives of the Consumer Groups signing this Petition to Initiate a Notice and Comment Rulemaking Proceeding, have hearing or speech disabilities and use Video Relay Service (“VRS”) and other

¹ 47 C.F.R. § 1.401.

forms of Telecommunications Relay Services (“TRS”) on a regular basis. Consumer Groups also have a long and distinguished history of representing the interests of deaf, hard of hearing, late-deafened, and deaf-blind consumers (hereinafter “deaf and hard of hearing” consumers) in matters before the Commission related to TRS, including matters related to the provision of VRS. For example, the Commission invited and several of the Consumer Groups participated as panelists in a Workshop on VRS Reform held on December 17, 2009.

B. Background

Consumer Groups have learned that some VRS providers are either not connecting or may stop connecting certain types of VRS calls because the National Exchange Carriers Association (NECA), the TRS Fund administrator, is withholding payment for certain types of calls.²

Not connecting certain types of VRS calls is inconsistent with Section 64.604(a)(3) of the Commission’s rules, harms consumers, and is not functionally equivalent to the communication access that hearing telephone users enjoy.

1. TRS Mandates under Section 225 of the Communications Act

Section 225(b)(1) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 225, requires the Commission to “ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” This requirement is mandated “to make available to all individuals in the United States a rapid,

² Ex Parte Letter on Compensable Minutes Petitions and Needed Clarifications from CSDVRS, LLC, LifeLinks, LLC, Snap Telecommunications, Inc., and Sprint Relay to Chairman Genachowski and Commissioners Copps, McDowell, Clyburn, and Baker, CG Docket 03-123 (January 20, 2010) (“Providers’ Letter on Compensable Minutes Petitions”).

efficient nationwide communication service, and to increase the utility of the telephone system of the Nation.”³

Section 225(a)(3) of the Act defines TRS as:

... telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have an hearing impairment or a speech impairment to communicate using voice communication service by wire or radio. . . .

In accomplishing these mandates, the Act requires that implementing regulations “encourage . . . the use of existing technology and do not discourage or impair the development of improved technology.”⁴

Congress clearly expected that all types of telecommunications services, using both existing and improved technologies, are to be made available to people with disabilities. This is consistent with other provisions of the Act as well. Section 255(c) of the Act states: “A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.” 47 U.S.C. § 255(c). Section 7(a) of the Act unequivocally states: “It shall be the policy of the United States to encourage the provision of new technologies and services to the public.” 47 U.S.C. § 157(a).

2. Current Rules Regarding Types of Calls

Section 64.604(a)(3) of the Commission’s rules govern “types of calls.” Specifically, Section 64.604(a)(3)(i) states:

Consistent with the obligations of telecommunications carrier operators, [communications assistants (CAs)] are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services.

Further, Section 64.604(a)(3)(ii) states:

³ 47 U.S.C. § 225(b)(1).

⁴ 47 U.S.C. § 225(d)(2).

Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call.

TRS providers are also required to provide call release, speed dialing, and three-way calling functionality;⁵ access to voice mail and interactive menus;⁶ answering machine and voice mail retrieval;⁷ and other functions and features.

Taken together, these and other provisions of the Act and the Commission's rules show a very clear directive on the part of Congress and the Commission to make available to people with disabilities all of the same types of calls and services that are or become available to people without disabilities, when technologically feasible to do so, and in a manner that is as functionally equivalent as possible.

Notwithstanding these mandates, Consumer Groups have learned that some VRS providers are either not connecting or may stop connecting certain types of VRS calls because NECA, the TRS Fund administrator, is withholding payment for certain types of calls.⁸ For example, calls that are connected to automated call response or interactive voice response (IVR) systems; calls that are connected to recorded communication, such as that provided by government agencies; multiple calls from a single videophone/VRS number; multiple calls to a single telephone number; calls to technical support services (i.e., Blackberry and T-Mobile during a service outage); calls connected to telephone conference call service numbers; and other types of calls. These examples are all commonly recognized as "phone calls" (or calls to a

⁵ 47 C.F.R. § 64.604(a)(3)(vi).

⁶ 47 C.F.R. § 64.604(a)(3)(vii).

⁷ 47 C.F.R. § 64.604(a)(3)(viii).

⁸ "As a result, VRS providers are placed in the impossible position on the one hand of being obligated by the TRS rules to continue to process all calls as they are received . . . ; yet, on the other hand providers are being denied compensation for the costs they incur to handle those calls." Providers' Letter on Compensable Minutes Petitions at 1.

hearing telephone user's number). All of these types of calls are provided by telecommunications carriers, are technologically feasible, and are otherwise required to be connected and handled in accordance with Section 64.604(a)(3).

These NECA payment withholdings, for certain types of calls, have languished, without resolution, for months. As a result, some VRS providers may be financially unable to continue providing service for those types of calls.⁹

3. Current Rules Regarding the TRS Fund

The Commission established the TRS Fund, effective July 26, 1993, and selected NECA as the TRS Fund administrator.¹⁰ TRS providers must submit "true and adequate data . . . necessary to determine TRS Fund revenue requirements and payments."¹¹ Further, the TRS administrator and the Commission "have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of TRS Fund payments."¹² In addition, TRS providers must submit reports of interstate TRS minutes of use to NECA in order to receive payments.¹³ The Commission's rules say that NECA "*shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so.*"¹⁴

⁹ "In some cases, the repercussions have been particularly dire. Several providers have been forced to the brink . . ." Providers' Letter on Compensable Minutes Petitions at 1.

¹⁰ 47 C.F.R. § 64.404(c)(5)(iii)

¹¹ 47 C.F.R. § 64.404(c)(5)(iii)(C). *See also* Petition for Clarification or Rulemaking on Automated Data Collection, CSDVRS, LLC, GC Docket 03-123 (May 22, 2009) (seeking expedited rulemaking or clarification that 47 C.F.R. §64.604(c)(5)(iii)(C) requires automated data collection by VRS providers of session and conversation minutes).

¹² 47 C.F.R. § 64.404(c)(5)(iii)(C).

¹³ 47 C.F.R. § 64.604(c)(5)(iii)(E).

¹⁴ 47 C.F.R. § 64.604(c)(5)(iii)(E) (emphasis added).

Consumer Groups appreciate the necessity for these rules and authority. However, Consumer Groups urge the Commission and NECA to ensure transparency by enabling stakeholder input in the process of establishing procedures to verify payment claims. Further Consumer Groups urge the Commission and NECA to exercise their authority to suspend or delay payments in a manner that is reasonable. Reasonable exercise of this authority should not, directly or indirectly, impact negatively on the delivery of TRS to consumers; diminish functional equivalency; or limit, restrict, or disable consumers' access to the telephone network.

4. Additional Steps Taken by the Commission and NECA to Strengthen the Integrity of the TRS Fund

Consumer Groups learned that, in 2008, the Commission's Managing Director directed NECA "to take specific steps to strengthen its internal control structure over its finance and accounting operations, to enhance the transparency of its operations, and to improve the efficiency and effectiveness of its operations as the TRS Fund Administrator."¹⁵ Further, the Commission expressed its expectation that "these steps will help strengthen the integrity of the TRS Fund and combat *potential* waste, fraud and abuse in the TRS Fund so that the Commission and program stakeholders can be assured that TRS Fund monies are being used in an efficient, effective manner."¹⁶ These "steps" included the development of written policies and procedures to review and verify the minutes of use submitted by each provider for payment each month, to ensure that the minutes submitted are legitimate, to detect call patterns that suggest fraud, to follow-up on findings and recommendations of the Inspector General and other auditors, to establish formal anti-fraud policies and procedures and proactive measures to combat *potential*

¹⁵ Letter dated October 30, 2008, from Anthony J. Dale, Managing Director, Office of Managing Director (OMD) to Bill Hegmann, President and Chief Executive Officer, National Exchange Carrier Association (NECA) ("FCC OMD Letter to NECA"). See "Appendix A" attached hereto.

¹⁶ FCC OMD Letter to NECA at 1 (emphasis added).

waste, fraud, and abuse in the TRS program. NECA was further instructed, on “a going forward basis,” to “coordinate, and secure approval of, any proposed change to its policies or procedures with the Commission before making such changes.”¹⁷

Again, Consumer Groups appreciate the necessity of identifying *potential* waste, fraud, and abuse in the TRS program. However, Consumer Groups urge the Commission and NECA to ensure transparency by enabling stakeholder input in the process of *identifying and addressing* such *potential* waste, fraud, and abuse. Efforts to curb fraud, waste, and abuse should not limit, restrict, or diminish functional equivalency. Consumer Groups urge the Commission to target the conduct, not the type of call. For example, Consumer Groups learned that the Commission has already identified certain types of calls that are ineligible for reimbursement from the TRS Fund without input from all stakeholders.

Consumer Groups have recently learned that, since July 2009, NECA has withheld payment in some instances and that review of the follow-up information requested from and submitted by providers is “ongoing.”¹⁸ Consumer Groups have also recently learned that “minutes associated with all calls made to recorded messages have not been paid since July”¹⁹ of 2009. NECA justifies that action as “consistent with the Commission’s reminder contained in an Order denying a petition by Purple last September”²⁰ that sought to allow compensation for VRS used to enable deaf-only multi-party conference calls. NECA quotes that part of the Order that says:

¹⁷ FCC OMD Letter to NECA at 2.

¹⁸ Memo from John Ricker, Director, Universal Service Support Programs, and member of the Interstate TRS Advisory Council representing NECA, the TRS Fund Administrator, addressed to Interstate TRS Advisory Council Members and transmitted by Jill Cardoso, NECA TRS Fund Administration, by electronic mail on January 22, 2010. See “Appendix B” attached hereto.

¹⁹ *Id.*

²⁰ *Id.*

We take this opportunity to reiterate and emphasize to all providers that VRS calls not involving a hearing individual unambiguously are *not* compensable under current law. Section 225 of the Communications Act defines “telecommunications relay services” as “telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual.”²¹

In other words, NECA interprets “calls made to recorded messages” as “calls not involving a hearing individual.” This interpretation defies logic because a recorded message is created by a hearing individual, for the hearing individual's convenience of not having to repeat the same communication more than once, and the same communication is intended to be and is delivered when calls are placed to that hearing individual's telephone number. That recorded message, made by a hearing individual, is aural and thus not accessible by a person with a hearing disability without the assistance of VRS or another form of TRS. In other words, for TRS purposes, a call that is connected to a recorded message is a call to a hearing individual.

NECA’s interpretation is also completely inconsistent with Section 64.604(a)(3)(ii) of the rules, which as discussed earlier requires that “[r]elay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so.” In other words, NECA’s action erroneously relies upon an Order issued by the Consumer and Government Affairs Bureau that is inconsistent with the Commission’s rules.²² As explained by the Consumer Groups in their

²¹ *Id.* See also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CG Docket No. 03-123, DA 09-2084 (released September 18, 2009) at ¶ 4 *citing* 47 U.S.C. § 225(a)(3).

²² See Application for Review of Consumer Groups (TDI, ALDA, NAD, DHHCAN, CCASDHH, ADB, and HLAA), CG Docket 03-123 (October 19, 2009). Consumer Groups argue that the Bureau’s action was inconsistent with prior Commission interpretations of Section 225 of the Act; and that the Bureau acted improperly when it dismissed in part the Purple Petition without first asking for public comment. Consumer Groups request the Commission to reverse the Bureau’s Order, return to pending status the part of the Purple Petition dismissed by

Application for Review of that Order, only the full Commission can modify Commission rules pursuant to notice and comment rulemaking. When a Bureau Order is inconsistent with a Commission rule, as is the case here, it is the Commission rule and not the Bureau Order that must be followed. In this instance, NECA exceeded its authority by erroneously applying a Bureau Order that was unlawful.

These types of calls are provided by telecommunications carriers, are technologically feasible, and are otherwise required to be connected and handled in accordance with Section 64.604(a)(3). Absent a transparent rulemaking process, it is impossible to reconcile the steps taken by the Commission and NECA to strengthen the integrity of the TRS Fund and the Commission's own rules governing the types of calls that must be enabled and handled.

II. The Commission Should Initiate Rulemaking to Promote Transparency, Obtain Stakeholder Input, Further the Achievement of Functional Equivalency, Protect Consumer Privacy, and Protect the Integrity of the TRS Fund

Consumer Groups and other stakeholders have asked, repeatedly, for the Commission to take action, particularly by initiating rulemaking, to identify and to address potential waste, fraud, and abuse by providing clarification about permissible marketing practices and the types of calls that are compensable by the TRS Fund. See "Appendix C," attached hereto, which lists some of those requests. To date, and despite the Commission's rule requiring petitions for rulemaking to be placed on public notice promptly,²³ the Commission has taken no such action. The Consumer Groups therefore request that the Commission initiate a notice and comment rulemaking proceeding for the purpose of considering each of the petitions listed in Appendix C.

the Bureau, and issue a public notice requesting comment on the entire Purple Petition. See also Application for Review of Purple Communications, Inc., CG Docket 03-123 (October 14, 2009).

²³ 47 C.F.R. § 1.403.

Consumer Groups note that these requests and recommendations for Commission action have not been made in response to the additional steps taken by the Commission and NECA to withhold payment for certain types of VRS calls, which has resulted and is expected to increasingly result in consumer VRS calls not being connected.²⁴ There has been no transparency and no opportunity for Consumer Groups or other stakeholders to provide input, including on the development of NECA policies and procedures affecting the Interstate TRS Fund and impacting, directly or indirectly, the ability of consumers to place VRS calls.

While Consumer Groups applaud efforts to ensure the integrity of the Interstate TRS Fund, fraud is and must be distinguished from compensable VRS calls. **It is the position of Consumer Groups that VRS calls to a telephone user's number must be permitted, connected, and reimbursed by the TRS Fund**, unless there is clear and unequivocal evidence of fraud against the VRS program.

Consumer Groups urge the Commission to issue a notice of proposed rulemaking ("NPRM"), to promote transparency and ensure stakeholder input, before the Commission takes any action which may limit, restrict, or disable consumer access to the telephone network, including actions that achieve the same result through the development and implementation of NECA policies and procedures. Regulating through NECA's back door is utterly inappropriate and violates Section 553 of the Administrative Procedures Act ("APA"), 5 U.S.C. § 553, which requires notice and comment procedures prior to the adoption of new rules.

²⁴ *But see* Petition for Rulemaking on Internal VRS Calls and VRS Conference Calls of CSDVRS, LLC, CG Docket 03-123 (November 17, 2009). Proposes, among other things, that the Commission institute due process measures for payment withholdings in the form of a Letter of Intent and/or Notice of Apparent Liability for Forfeiture.

Consumer Groups cannot wait for more consumers to be denied the ability to place a VRS call before Consumer Groups take action. Instead, Consumer Groups urge the Commission to take the following actions:

- quickly resolve any VRS payment withholding disputes by instructing NECA to release the payments until a rulemaking addressing the issue of permitted calls is completed, and a process is established for timely responses/decisions;
- immediately act to ensure that VRS providers continue to permit and connect VRS calls made to a telephone user's number; and
- issue an NPRM, to promote transparency and ensure stakeholder input, before the Commission takes any action which may limit or restrict VRS calls.

Further, Consumer Groups request that, in such NPRM, the Commission disclose and describe any and all types, categories, or classes of VRS calls that the Commission or NECA has suspended, delayed, or otherwise withheld payment, does not compensate, or has determined are not compensable, so Consumer Groups and other stakeholders may have an opportunity to comment.

Finally, Consumer Groups urge the Commission to ensure that such rulemaking furthers the achievement of and does not diminish functional equivalency; protects consumer privacy; addresses fraud through appropriate investigation and enforcement action; and does not limit or restrict consumer VRS calls, directly or indirectly, through NECA's back door. Rules must be clear, guidance must be provided, response to requests for clarification must be prompt, and compliance and enforcement measures must be transparent.

III. Adoption of the Measures Proposed in this Petition is in the Public Interest

Congress recognized that relay services are vital to deaf and hard of hearing individuals, with respect to quality of life, employment, and safety issues, when it adopted Section 225 of the Communications Act. The Commission has enacted various rules designed to implement

Section 225 and thereby increase the availability of relay services to achieve equal access to the telephone network – access that is functionally equivalent to that enjoyed by telephone users. These rules are a good start towards achieving that goal, but transparent rulemaking and enforcement measures are needed to protect consumer interests, ensure stability and competition in the VRS industry, and protect the integrity of the Interstate TRS Fund.

The Commission should initiate appropriate rulemaking proceedings to provide clarification about permissible marketing practices and the types of calls that are compensable by the TRS Fund. *Withholding compensation for VRS calls may be appropriate* when there is clear and unequivocal evidence of fraud, or *for a specified time of limited duration, but not indefinitely*. Enhanced enforcement mechanisms under the TRS rules will encourage VRS providers to self audit the provision of VRS to ensure compliance. Such mechanisms will also ensure that investigations are completed in a timely manner so that withholding compensation is not indefinite, does not impermissibly result in blocked VRS calls, and ensures that the VRS industry can remain competitive. By adopting the proposals advocated herein, the Commission will better implement the requirements of Section 225.

IV. Conclusion

Based on the foregoing, Consumer Groups respectfully request that the Commission institute a notice and comment rulemaking pursuant to Section 553 of the APA for the purpose of considering each of the petitions listed in Appendix C and take other action as described herein.

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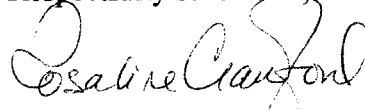
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January 27, 2010

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Appendix A

Letter dated October 30, 2008,
from Anthony J. Dale, Managing Director, Office of Managing Director (OMD),
to Bill Hegmann, President and Chief Executive Officer,
National Exchange Carrier Association (NECA)



Federal Communications Commission
Washington, D.C. 20554

October 30, 2008

Bill Hegmann
President and Chief Executive Officer
National Exchange Carrier Association
80 South Jefferson Road
Whippany, NJ 07981-1009

Dear Mr. Hegmann:

This letter addresses measures to safeguard the Telecommunications Relay Service (TRS) Fund. Specifically, the Office of Managing Director (OMD) of the Federal Communications Commission (Commission) directs the National Exchange Carrier Association (NECA) to take specific steps to strengthen its internal control structure over its finance and accounting operations, to enhance the transparency of its operations, and to improve the efficiency and effectiveness of its operations as the TRS Fund Administrator. We expect that these steps will help strengthen the integrity of the TRS Fund and combat potential waste, fraud and abuse in the TRS Fund so that the Commission and program stakeholders can be assured that TRS Fund monies are being used in an efficient, effective manner.

First, as the administrator of the TRS Fund, NECA should implement effective internal controls over its operations, including the administration of the TRS Fund and compliance with applicable laws and regulations. In particular, NECA should implement an internal control structure consistent with the standards and guidance contained in Office of Management and Budget (OMB) Circular A-123, including the methodology for assessing, documenting, and reporting on internal controls specified in Appendix A of OMB Circular A-123. This appendix requires, among other things, establishing a "Senior Management Council" charged with regularly assessing internal controls in order to maintain or improve strengths and correct weaknesses. Implementing internal controls consistent with OMB Circular A-123 will help ensure that, in administering the TRS Fund, NECA will comply with all relevant and applicable federal financial management and reporting statutes, as required by Section 64.604(c)(5)(iii)(H) of the Commission's rules. NECA should submit, within 30 days of the date of this letter, a plan for implementing the enhanced internal control structure required by OMB Circular A-123.

Second, Section 64.604(c)(5)(iii)(E) of the Commission's rules requires NECA to "establish procedures to verify payment claims." NECA should develop written policies and procedures governing its activities and functions as the current Fund administrator, including procedures to review and verify the minutes of use submitted by each provider for payment each month. The policies and procedures should ensure that NECA reviews and verifies, on a monthly basis, all call data submitted each month by each provider, including all available calling and called numbers, to ensure that the minutes submitted are legitimate and that the correct amount of funds are disbursed, and to detect call patterns that suggest fraud. NECA should ensure that providers do not submit improper costs or improper minutes for the annual rate setting process. NECA should also ensure that providers do not submit improper minutes

for monthly payments. These written policies and procedures should include appropriate procedures to follow-up on findings and recommendations of the Inspector General and other auditors. NECA should also establish formal anti-fraud policies and procedures that identify proactive measures that NECA is taking to combat potential waste, fraud, and abuse in the TRS program. NECA should submit its policies and procedures within 30 days of the date of this letter. In addition, NECA should submit within 30 days of the date of this letter a proposed list of additional written policies and procedures that it will implement (along with a proposed implementation timeline) to better safeguard the monies of the TRS Fund. On a going-forward basis, NECA should coordinate, and secure approval of, any proposed change to its policies or procedures with the Commission before making such changes.

Third, with respect to the annual submission of cost and demand data used to determine the compensation rates and Fund size, NECA should establish written policies and procedures to frequently review the submissions of TRS providers seeking compensation from the TRS Fund. Section 64.604(c)(5) of the Commission's rules states that "TRS providers shall provide the administrator with true and adequate data necessary to determine TRS fund revenue requirements and payments." The Commission's rules also require TRS providers to provide NECA with total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with Part 32 of the Commission's rules. Section 64.604(c)(5) also requires TRS providers to provide "other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. Finally, Section 64.604(c)(5) authorizes NECA "to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments." Consistent with this authority, NECA should verify the accuracy of the data submitted by the providers to ensure that, with respect to projected costs, the costs are reasonable and recoverable under the guidelines set forth in the Commission's rules and orders. NECA should review the providers' submitted overhead costs to ensure that such costs are properly allocated. NECA's review should include TRS traffic involving contractors or subcontractors of TRS providers.

Fourth, NECA should submit a report within 10 days of the end of each month to OMD, the Inspector General, and the Consumer and Governmental Affairs Bureau (CGB) that includes program data (*e.g.*, total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with Part 32 of the Commission's rules) and financial data (*e.g.*, administrative expenses, assets, fund balances). In addition, NECA should include in this monthly report a detailed explanation of any discrepancies or errors uncovered in its regular review of TRS provider data. Discrepancies or errors include, but are not limited to, duplicate minutes, billing for test calls, and billing for calls associated with the installation of VRS telephones.

Fifth, NECA should submit to OMD and the Inspector General each month, within 10 days of the end of the month, a status report addressing any corrective action arising from audit reports issued by the Inspector General or other auditors. This audit follow-up report should include, among other things, information about the status of any actions to recover improperly disbursed funds.

Finally, NECA should ensure that it notifies the Commission in writing (including the Inspector General, OMD and CGB) of potential noncompliance or any waste, fraud, or abuse that it uncovers in its capacity as the administrator of the TRS Fund as soon as possible, but in any event, not later than seven (7) days after identifying the potential noncompliance. NECA shall ensure that it notifies the Inspector General in writing of any potential fraud or fraud indicators that it uncovers in its capacity as the administrator of the TRS Fund within 24 hours of discovery. In addition, NECA should notify the Commission in writing (including the Inspector General, OMD and CGB) of any failure on the part of any TRS provider to submit any information required under Commission rules or requested by NECA.

If you have any questions, please do not hesitate to call me at (202) 418-1919. You may also contact the Commission's Chief Financial Officer, Mr. Mark Stephens.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony J. Dale", with a long horizontal flourish extending to the right.

Anthony J. Dale
Managing Director

CC: Kent R. Nilsson, Inspector General
Cathy Seidel, Chief, Consumer and Governmental Affairs Bureau
Kris Monteith, Chief, Enforcement Bureau

Appendix B

Memo from John Ricker, Director, Universal Service Support Programs,
and Member of the Interstate TRS Advisory Council
Representing NECA, the TRS Fund Administrator,
to Interstate TRS Advisory Council Members,
Transmitted by Jill Cardoso, NECA TRS Fund Administration,
by Electronic Mail on January 22, 2010¹

¹ In an electronic message to Interstate TRS Advisory Council Members on January 25, 2010, John Ricker corrected and apologized for misinterpreting a comment made by Kelby Brick, Chair of the Interstate TRS Advisory Council. Mr. Ricker interpreted the comment “as vouching for the conditions under which payments were being withheld from certain providers, not as vouching for the fact that some payments were being withheld.” Mr. Ricker explained further that Mr. Brick was “correct in his vouching for the fact that payments were being withheld.”

Interstate TRS Advisory Council Members:

Contrary to the claims of some on the internet, in spite of Kelby's vouching for them, they are not accurate. Have we been withholding and/or denying some VRS minutes that have been submitted by the providers each month? Yes, we have.

Since July we have been reviewing the call detail records submitted for each VRS provider. As a result of our review, on a provider by provider basis, a decision has been made to not pay the providers for calls to recorded messages, consistent with the Commission's reminder contained in an Order denying a petition by Purple last September where the Commission stated, "We take this opportunity to reiterate and emphasize to all providers that VRS calls not involving a hearing individual unambiguously are *not* compensable under current law. Section 225 of the Communications Act defines "telecommunications relay services" as "telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual". Thus, minutes associated with all calls made to recorded messages have not been paid since July.

Additionally, based on the analysis performed on each of the provider's data, there have been some instances where we have withheld payment and requested the providers to submit additional information. Review of the follow-up information is ongoing.

To Ron's point about demand for VRS service being down, there is not a direct correlation between the minutes we have withheld payment for, to date and the reduction in demand. Based on our analysis, demand is down approximately 20 percent for the first five months of the fund year (even with the non-podcast minutes that have been withheld included).

John

Appendix C

Requests and recommendations for the Commission to take action, particularly by initiating rulemaking, to identify and to address potential waste, fraud, and abuse by providing clarification about permissible marketing practices and the types of calls that are compensable by the TRS Fund.

- Ex Parte Comments of the National Association of State Relay Administration (“NASRA”), CG Docket 03-123 (November 10, 2008). Referring to prior Commission Orders prohibiting financial or other incentives or rewards that encourage use of VRS, NASRA submitted this “petition for clarification” of certain alleged marketing practices of VRS providers.
<http://fjallfoss.fcc.gov/ecfs/document/view?id=6520187041>
- Ex Parte Comments of Sorenson, Inc., CG Docket 03-123 (November 25, 2008). Supporting the NASRA “petition” (November 10, 2008), Sorenson urged the Commission to institute enforcement proceedings and to clarify practices that are impermissible by publishing enforcement decisions or by declaratory ruling.
<http://fjallfoss.fcc.gov/ecfs/document/view?id=6520187918>
- Ex Parte Comments of Sorenson, Inc., CG Docket 03-123 (May 12, 2009). Urging the Commission to “promptly issue a public notice clarifying that the practices identified by NASRA are impermissible under Section 225 of the Act and the Commission's no-incentives decisions.”
<http://fjallfoss.fcc.gov/ecfs/document/view?id=6520216429>
- Ex Parte Notice of Snap Telecommunications, Inc., CG Docket 03-123 (May 15, 2009). Urging the Commission to respond to the NASRA “request to assess certain marketing practices, and if found illegitimate, to enforce against such practices.” <http://fjallfoss.fcc.gov/ecfs/document/view?id=6520216648>
- Petition for Declaratory Ruling of AT&T, CAC, CSDVRS, LLC, GoAmerica, Inc., Lifelinks, LLC, Snap Telecommunications, Inc., Sorenson Communications, Inc., Sprint Nextel Corporation, and Viable Inc., CG Docket 03-123 (January 28, 2009) (“Joint Petition”). Petition seeking clarification that “all relay calls between and among individuals who are deaf, hard of hearing, speech-disabled and deaf-blind using different technologies [now and in the future] that are needed to achieve functionally equivalent telephone service, are legitimate TRS calls that are eligible for reimbursement from the TRS Fund, even when such calls involve more than one CA or interpreter.”
<http://fjallfoss.fcc.gov/ecfs/document/view?id=6520194266>
- Letter from the Interstate Advisory Council, CG Docket No. 03-123 (March 13, 2009). Invitation for Commission participation and presentations at Council meetings, on topics such as enforcement against fraudulent calls; request for information on oversight and accountability of third-party vendors of relay service; endorsement of Commission classification of peer-to-peer relay calls (also known as dual relay services) as reimbursable from the TRS Fund; and other matters.
<http://fjallfoss.fcc.gov/ecfs/document/view?id=6520201129>

- Ex Parte Notice of Snap Telecommunications, Inc., CG Docket No. 03-123 (June 15, 2009). Discussed various business initiatives and ideas, and the “importance of Commission in seeking enforcement actions against providers who engage in improper VRS practices to artificially increase the size of the TRS fund.”
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7019914472>
- Ex Parte Presentation of CSDVRS, LLC, CG Docket No. 03-123 (June 17, 2009). Expressed concern, among other things, “about the extent to which reports are circulating about VRS fraud and abuse, including telemarketing schemes that employ deaf people to use VRS to call hearing businesses at random.”
<http://fjallfoss.fcc.gov/ecfs/document/view?id=6520222503>
- Reply Comments of United States Telecom Association (“USTelecom”), CG 03-123 (July 20, 2009). Discussing (at p. 5) the “numerous allegations that the program is riddled with fraud”; suggesting increased enforcement efforts, determining whether certain practices are reimbursable, and providing greater clarity on allowable reimbursement to help eliminate “manufactured minutes.”
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7019917315>
- Petition for Rulemaking to Clarify Relay Rules of Purple Communications, Inc., CG Docket No. 03-123 (August 12, 2009) (“Purple Petition”). Requested rulemaking to address the following ambiguities created by Commission declaratory rulings: (1) that employees and contractors of TRS providers may make TRS calls in the course of their employment; (2) that reimbursement from the interstate TRS Fund for the reasonable costs generated through multi-party calls between deaf and hard-of-hearing individuals and persons who may or may not have such disabilities is permissible; and (3) that confirm the lawfulness of reasonable outreach and marketing practices to make all consumers, including enterprise consumers, aware of TRS availability.
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020035612>
 - Letter from Tony Coelho to Chairman Genachowski, CG Docket 03-123 (August 12, 2009). Supporting the Purple Petition, noting the major role of conference calls in employment, and urging the Commission to “clarify that minutes associated with multi-party TRS calls between deaf and hard of hearing individuals and persons who may or may not have such disabilities are reimbursable from the interstate TRS Fund.”
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7019935165>
 - Letter from Consumer Groups (TDI, NAD, CCASDHH, AADB, ALDA, HLAA, DHHCAN, and AAPD) to Chairman Genachowski, CG Docket No. 03-123 (September 11, 2009). Expressing support for Commission efforts to eliminate instances of waste, fraud and abuse; expressing support for Purple’s request to clarify the rules (filed August 12, 2009); acknowledging the CSDVRS Petition (September 1, 2009); noting the need for further clarification regarding what constitutes permissible,

appropriate, and reasonable outreach; supporting the view that functionally equivalent communication includes the use of conference calls; seeking affirmation of the general principle that equipment may be subsidized or given away for free by Internet-based TRS providers at this time; and requesting the Commission to place the Purple filing on public notice as early as possible.

<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020038274>

- Letter from the Registry of Interpreters for the Deaf (“RID”) to Chairman Genachowski, CG Docket No. 03-123 (September 28, 2009). Supporting Consumer Groups’ request (letter filed September 11, 2009) to place the Purple Petition (August 12, 2009) “on public notice as soon as practicable so that the voices of all stakeholders can be heard in this process.”
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020039687>
- *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CG Docket No. 03-123, DA 09-2084 (released September 18, 2009). Consumer and Government Affairs Bureau dismissed, in part, the Purple Petition (August 12, 2009). Pursuant to Section 1.401(e) of the Commission’s rules, the Bureau dismissed the part of the Purple Petition asking that the Commission to modify the rules to allow that multi-party conference calls that may not include people without disabilities are reimbursable from the Interstate TRS Fund. The Bureau found the Purple Petition inconsistent with the Joint Petition (January 28, 2009). The Bureau declined to address the other issues raised in the Purple Petition.
http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-2084A1.pdf
- Application for Review of Purple Communications, Inc., CG Docket 03-123 (October 14, 2009). Argues that the Purple Petition was improperly dismissed; that the Purple Petition is not in conflict with the previously filed Joint Petition; that the Commission's rules regarding calls not involving a hearing individual are ambiguous; and that public interest demands that the Commission seek comment on the Purple Petition.
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020142009>
- Application for Review of Consumer Groups (TDI, ALDA, NAD, DHHCAN, CCASDHH, ADB, and HLAA), CG Docket 03-123 (October 19, 2009). Argues that the Bureau’s action was inconsistent with prior Commission interpretations of Section 225 of the Act; and that the Bureau acted improperly when it dismissed in part the Purple Petition without first asking for public comment. Requests the Commission to reverse the Bureau’s Order, return to pending status the part of the Purple Petition dismissed by the Bureau, and issue a public notice requesting comment on the entire Purple Petition.
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020142429>

- Letter from Timothy P. Beatty, Chief, Independent Living & Assistive Technology Section, California Department of Rehabilitation, to Chairman Genachowski, CG Docket 03-123 (November 2, 2009). Supporting Application for Review filed by Consumer Groups (October 19, 2009). <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020244330>
- Request for Expedited Clarification on Marketing Practices of CSDVRS, CG Docket 03-123 (September 1, 2009) (“CSDVRS Petition”). Seeking clarification on whether or to what extent VRS or other TRS marking or outreach calls made by relay service employees or through a third party arrangement with that provider are permissible and reimbursable.
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020037275>
- Petition for Rulemaking of Sorenson Communications, Inc., CG Docket 03-123, RM No. 09-__, EB Docket No. 09-__ (October 1, 2009) (“Sorenson Petition”). Proposing rules to clarify what types of calls are non-compensable; to require providers to maintain professional work environments that are inhospitable to minute-pumping or other illicit schemes that could artificially inflate a provider's call volume; to give communications assistants narrow but important discretion to disconnect or interrupt certain Internet-based relay calls that likely do not meet the statutory definition of TRS and that therefore should not be compensated; and urging the Commission to move expeditiously in releasing a Notice of Proposed Rulemaking to seek public comment on these proposed rules.
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020040158>
 - Ex Parte Notice of Sorenson Communications, Inc., CG Docket 03-123 (October 8, 2009). Urging the Commission to place the Sorenson Petition (October 1, 2009) on public notice “quickly in order to advance the Chairman’s reform agenda”; describing the Petition for Rulemaking as “asking the Commission to adopt rules that define what types of [VRS] calls are compensable, what steps providers may take to prevent certain calls, and what information the FCC needs to develop data-driven tools for detecting wrongdoing;” and providing a chart titled, “Summary of Proposed Rules and Their Anticipated Effects.”
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020041098>
 - Ex Parte Notice of Sorenson Communications, Inc., CG Docket 03-123 (October 22, 2009).
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020142877>
 - Ex Parte Notice of Sorenson Communications, Inc., CG Docket 03-123 (November 6, 2009).
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020246912>

- Initial Comments on Sorenson Petition for Rulemaking of Purple Communications, Inc., CG Docket 03-123 (November 24, 2009). No position taken on any of Sorenson's proposals, but notes that the Sorenson Petition (October 1, 2009), CSDVRS Petition (September 1, 2009), and Purple Petition (August 12, 2009) demonstrate the need for the Commission to institute a proceeding on the issues raised in those Petitions, such as types of calls that are compensable, marketing and outreach practices, and authority of VRS providers to deal with abusive call situations.
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020350059>
- Ex Parte Notice of Sorenson Communications, Inc., CG Docket 03-123 (December 4, 2009).
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020351252>
- Ex Parte Notice of Sorenson Communications, Inc., CG Docket 03-123 (December 22, 2009).
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020354486>
- Ex Parte Notice of Snap Telecommunications, Inc., CG Docket No. 03-123 (October 30, 2009). Discussed various business initiatives and ideas, and the "need for greater enforcement against any violations of the TRS/VRS rules, fraudulent activity, and practices that artificially increase the size of the TRS fund." <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020244058>
- Ex Parte Notice of CSDVRS, CG Docket No. 03-123 (November 9, 2009). Discussed current VRS industry liabilities, recent filings before the Commission, and various options that CSDVRS might propose in a new petition for rulemaking; and provided a chart titled "Compensable VRS Calls and Eliminating Industry Fraud, Summary of Proposed Rules to be Submitted by CSDVRS." <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020347167>
- Petition for Rulemaking on Internal VRS Calls and VRS Conference Calls of CSDVRS, LLC, CG Docket 03-123 (November 17, 2009). Proposes the following: (1) a minute of use cap for providers' internal use of VRS and/or use of competitors' services; (2) allow non-VRS provider use of multi-party deaf-to-deaf conference calls through registered bridges or reimburse VRS providers, at cost, for the implementation, maintenance, and use of a multipoint control unit ("MCU") system for deaf-to-deaf videoconferencing; (3) prohibit compensation from NECA for a provider's customer support and service functions; (4) expand the scope of its contract with NECA to include more oversight; and (5) institute due process measures for payment withholdings in the form of a Letter of Intent and/or Notice of Apparent Liability for Forfeiture.
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020348850>

- Ex Parte Notice of CSDVRS, LLC, CG Docket 03-123 (November 23, 2009). Discussed current VRS industry liabilities, the issues raised in the Petition for Rulemaking (November 17, 2009), and other open VRS issues currently pending before the Commission.
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020349793>
- Letter from CSDVRS to Chairman Genachowski, CG Docket 03-123 (January 5, 2010). Describes ongoing issue concerning NECA withholding of payment for conference calls made through VRS, during August through October 2009, and possibly future billing cycles. Even with clear and indisputable evidence that these conference calls had both hearing and deaf participants, NECA refuses to reimburse for the calls. CSDVRS filed a Petition for Rulemaking (November 17, 2009) and notices of ex parte on this matter. Asks whether conference calls (internal or external to VRS providers) with hearing and deaf participants are billable, and whether NECA will continue withholding payment for conference calls with no clear guidance, reasoning, or legal basis. Continuing silence from the Commission and NECA “is economically damaging” and “undermining our ability to operate effectively.” Asks the Commission to “consider the damage done to companies and to the deaf community when the FCC undertakes measures such as this withholding.” “Punishing providers that operate by the rules while pursuing the wrongdoers is entirely inequitable.”
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020355243>
- Ex Parte Notice of the National Association of the Deaf, CG Docket 03-123 (January 13, 2010). Discussed the interests of Consumer Groups (NAD, TDI, DHHCAN, CCASDHH, ALDA, HLAA, and AADB) in working with the Commission to address VRS issues: (1) development of policies on routing of Internet-based relay service calls using toll free numbers; (2) following up on the recent Workshop on VRS Reform, issuing an NPRM for input on rate methodologies, and an NPRM on any proposed methodology, and for greater transparency in the rate setting process; and (3) consumer complaints about blocked VRS calls as a result of NECA withholding payment for certain calls.
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020368506>
- Ex Parte Letter on Compensable Minutes Petitions and Needed Clarifications from CSDVRS, LLC, LifeLinks, LLC, Snap Telecommunications, Inc., and Sprint Relay to Chairman Genachowski and Commissioners Copps, McDowell, Clyburn, and Baker, CG Docket 03-123 (January 20, 2010). Urging the commission to “(1) issue a notice of proposed rulemaking to establish clear rules specifying those Internet-based relay calls which may – and may not – be compensated by the TRS Fund; and (2) in the interim, clarify the specific procedures the Commission and NECA are to use in determining to withhold payment for any VRS minutes under review for compensation.”
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020382451>